

R.D. #0012-01
Paramus, NJ

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 22

CARE ONE, LLC.

Employer¹

and

CASE 22-RC-12116

**UNITED FOOD AND
COMMERICAL WORKERS
LOCAL 348-S, AFL-CIO, CLC**
Petitioner²

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board had delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding,³ the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act

¹ The name of the Employer appears as amended at hearing. While the Employer is currently conducting its enterprise under the name of Millenium Corp. LLC, it has changed its licenses and is in the process of changing its name to Care One, LLC.

² The name of the Petitioner appears as amended at hearing.

³ Briefs filed by the parties have been duly considered.

and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organization involved claims to represent certain employees of the Employer.⁴

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c) (1) and Section 2(6) and (7) of the Act.⁵

5. The appropriate unit for the purposes of collective bargaining within the meaning of Section 9(b) of the Act is described *infra*.

The Employer operates a senior residence and nursing care facility in Paramus, New Jersey, providing three levels of care: independent living, assisted living and nursing care, in a contiguous campus environment.⁶

Petitioner seeks to represent a number of employees employed at the assisted living portion of the facility. Petitioner amended its petition at hearing to include all full time and regular part time food service employees, chefs, dishwashers, waiters, waitresses, host and hostesses, housekeeping, service and maintenance employees employed by the Employer at its W.100 Ridgewood Avenue, Paramus, New Jersey facility, also known as the Cupola Senior Residence, excluding all office clerical employees, managerial employees, administrative employees, registered nurses, licensed practical nurses, certified nurses aids, temporary employees, other

⁴ The parties stipulated, and I find, that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

⁵ The parties stipulated that there is no history of collective bargaining at this facility and, consequently, no contract bar.

⁶ For ease of reference, and not to denote any geographic or entrepreneurial division, the independent living area is referred to as the Gazebo; the assisted living area is referred to as the Cupola; and the nursing care area is referred to as Pine Rest.

professional employees, guards and supervisors as defined in the Act and all other employees.⁷ In all, Petitioner seeks to represent a unit of approximately 50 employees.

The Employer contends that the unit sought by the Petitioner is inappropriate in that it fractionalizes the traditional senior care facility unit, excluding many individuals who share a community of interest with the included employees, while including individuals who do not share a community of interest with each other. The employer suggests that a more appropriate unit would be a typical service and maintenance unit including: certified nursing assistants, maintenance employees, and recreational and therapy aides in addition to those titles petitioned for by the Petitioner. In all, the Employer's unit would consist of approximately 120 employees.

The record reflects a highly integrated enterprise. The facility is directed on a day to day basis by its Executive Director, Noreen Haveron, who is singularly responsible for all labor relations.⁸ Directly below her are the various department heads: Dan Lull, Food Service Director; Annette Gold, Business Office Manager; Miguel De Leon and Marie Antoinette Burrell, Housekeeping Heads for Pine Rest and the Cupola, respectively; Caryn Contillo, Marketing Director; Lisa McConville, Director of Rehabilitation Services; Nancy La Battaglia, Director of Nursing at Pine Rest and Suzanne Bell, Director of Nursing at the Cupola/Gazebo; Sudeepa White,

⁷ Petitioner infers that the two addresses, W.100 Ridgewood Avenue and W.90 Ridgewood Avenue, establish two separate facilities, the Cupola at W.100 Ridgewood Avenue and Pine Rest at W.90 Ridgewood Avenue.

⁸ The Executive Director reports to the Directors of Millenium Limited Liability Corporation, only one of whom, Dr. Jeffrey Rubin, has been identified by name.

Assistant Administrator; Linda Vandelsdorf, Director of Social Services; Lisa Sullivan, Activities Director for the Cupola/Gazebo and Adrienne Iurato, Activities Director for Pine Rest; and Mike Tedesco, Director of Maintenance.⁹

The record discloses that there is substantial supervisory and managerial integration throughout the entire facility. Each morning begins with a meeting of the Executive Director and department heads to discuss the tasks of the day. Applicants for admission to any aspect of the facility meet with a team composed of the Executive Director, a nurse from the Cupola area, a nurse from the Pine Rest area and the Marketing Director. Potential residents are evaluated for proper placement. Individuals accepted for independent living are those who require no assistance with life functions and are able to come and go of their own accord. They reside in the Gazebo section of the facility. Those residents in assisted living, the section known as the Cupola, require some help with daily life functions, such as bathing, hygiene or dressing. The degree of help needed, not the kind, is what distinguishes them from the residents of the nursing care area, Pine Rest. Residents may move from one section of the facility to another based on medical need and assessment.

⁹ Except where noted, each department head fills that function for the entire facility, independent, assisted and nursing care areas. Where two individuals have the same title, the record reflects substantial interchange of supervisory function, e.g., housekeeping, where the two department heads alternate weekends and days off as well as interviewing potential housekeeping employees for housekeeping positions throughout the facility. There is no record evidence concerning the nursing function as those titles have not been petitioned for and the parties agree that RNs are professional employees and the LPNs are technical employees and are appropriately not included in the unit. However, the certified nursing assistants (CNAs) also report to the Directors of Nursing. I rely on what record evidence is available concerning CNA job assignments.

Turning to the unit employees, the record reflects uniform pay, benefits and working conditions as well as substantial and regular interchange of employees among the various areas of the facility. Beginning with the housekeeping employees, three of the 21 housekeepers work in both the assisted living and nursing service areas of the facility every day. Of the remaining 18, eight are usually assigned to assisted living and the other 10 work in the Pine Rest area or the laundry, which presumably provides linens for all areas of the facility. There are four laundry areas, accessible to both staff and residents, scattered throughout the facility. The duties of housekeeping employees are fungible and they interchange areas as much as twice a week..

Housekeepers are paid from \$7.50 to \$10.00 per hour, a rate that does not vary throughout the facility. As noted above, they are supervised by either of the two housekeeping department heads. Housekeepers are responsible for overall room cleaning, vacuuming, cleaning and sanitizing bathrooms, mopping floors, cleaning main areas, dusting, and taking down cubicle curtains, sheers and cleaning windows.

There is one maintenance supervisor for the entire facility. He supervises six maintenance workers who work throughout the facility doing general maintenance work, mechanical work, painting or porter work. Although the record is silent as to the hourly rate range for maintenance employees, the same hourly rate applies no matter which area of the facility they work in.

The kitchen and dining room staff consists of dishwashers, chefs, waiters and waitresses and hosts and hostesses. Dishwashers are paid the same hourly rate, approximately \$7.00, if they are working in the kitchen in the Cupola area or the Pine Rest area. At least twice a month dishwashers switch kitchens, usually to cover for

call outs for illness. Another two to three times a month the kitchen staffs work together to cover special events, such as health fairs. There are 11 chefs employed throughout the facility, six of whom are assigned to the Cupola area kitchen and five of whom are assigned to the Pine Rest area kitchen. Their salary range is from \$9.75 to \$16.75 per hour. Like dishwashers, chefs change kitchens on an as needed basis, at least once per month, chefs assigned to one area can move over to the other area without loss of pay, benefits or seniority and may transfer over on a permanent basis if a vacancy occurs. As noted *supra*, all areas of the kitchen staff work together several times a month to handle special events.

Waiters and waitresses are assigned only to the dining rooms located in the Cupola area. There are 29 waiters and waitresses who earn from \$7.00 to \$14.00 per hour. The dining rooms in the Cupola are available to all residents as well as their guests. Waiters and waitresses are assigned duty stations in the dining room by Host Tim Palmer,¹⁰ or, in his absences, one of the other four hostesses who also fill that function. Hosts and hostesses report to Food Service Director Dan Lull, who supervises the kitchen and dining rooms throughout the facility.¹¹

Certified Nursing Assistants (CNAs) are assigned to the assisted living and nursing care areas of the facility. There are 12 CNAs working day shifts, 10 on evening shifts and seven on night shifts. The record is silent as to how many CNAs are assigned to each of the areas of the facility, although they provide the same service throughout: helping the residents with hygiene, bathing, dressing, assisting

¹⁰ Although the Employer alleges that the Host and Hostesses titles are supervisory, the record is silent as to any supervisory indicia.

¹¹ The parties have stipulated that Food Service Director Dan Lull is a supervisor.

with meals in the dining rooms or bringing food trays to those who cannot get to the dining rooms. Occasionally, a CNA from one area will work in another area of the facility, as needed. There is no difference in the hourly rate of \$8.00 to \$12.00 no matter where the CNA is assigned or works.

The facility also employs 10 activities aides who do recreational programming, trips, parties, social events, educational events and basic recreation. They are paid \$10.00 - \$11.00 per hour. The record is silent as to their area assignments. There are also four therapy aides, working under the direction of a licensed physical therapist. The record reflects that they provide therapy throughout the facility but is silent as to specific area assignment or rate of pay.

As noted *supra*, the facility is one contiguous unit, as reflected in the floor plan submitted as Employer's Exhibit One. There is one payroll person who prepares the payroll for the entire facility, drawn from one operating account. That account has two different checks – Millenium, d/b/a The Cupola and Millenium, d/b/a Pine Rest. The Employer asserted that this differentiation is solely for accounting purposes. The facility has two mailing addresses, W.100 Ridgewood Avenue and W.90 Ridgewood Avenue. The Employer noted that the separate addresses are a convenience for the postal service and that the facility has 27 separate entrances and exits. There is one business office for the entire facility and one person maintains all medical records. All employee records are maintained in the business office. The sick leave policy is the same throughout the facility, as is the health care plan and vacation allowance. There are separate time clocks for the Cupola and Pine Rest, two separate employee break rooms and each housekeeping section maintains its own

storage area. Food purchases are made by various people from a list of preferred vendors but medical purchases are made by one person for the entire facility.

Unlike acute care facilities, the Board has not taken a rule-making stance in regard to nursing care facilities. *Pine Manor Care Center*, 305 NLRB 872 (1991). Rather, in determining the appropriateness of a petitioned for unit in a nursing care facility, the Board employs a community of interest test, using the following criteria: degree of functional integration; common supervision; nature of employee skills and functions; interchangeability and contact among employees; common work sites; general working conditions and fringe benefits. Here, the record reflects that the fringe benefits and general working conditions are the same. *Allied Gear and Machine Co.*, 250 NLRB 679 (1980). All employees are covered by the same health benefits, the same sick leave time and vacation benefits and all employees work a 37 ½ - 40 hours, five day week. Wages are the same for a given title, no matter what area the employee is assigned, and seniority is accumulated in exactly the same way.

Although the Petitioner infers that there is a difference in work sites, in that it seeks only the employees assigned to the Cupola area, the facility is one contiguous, highly integrated enterprise. A local and centralized management team oversees all areas of the facility. A daily management meeting among the Executive Director and all department heads sets the priorities for the day. *Transerv System*, 311 NLRB 266 (1993); *Sears, Roebuck & Co.*, 319 NLRB 607 (1995). As the record is silent as to any intermediate supervisory level, it appears that common supervisory direction is provided by the Executive Director and those stipulated supervisors like Dan Lull in Food Services. Once the priorities have been established, the enterprise requires

significant functional integration from the bathing, dressing and feeding of residents to the care of their personal residence areas. CNAs work with the kitchen, dining room and housekeeping staff, recreational and therapy aides in the 24 hour care of residents. The record evidence demonstrates that the employee skills and functions are sufficiently similar to establish a community of interest among those employees the Employer suggests be included in the Unit.¹² *Seaboard Marine Ltd.*, 327 NLRB 556 (1999).

Petitioner, in its brief, argues that the Cupola constitutes a single facility and that the Board's rebuttable presumption that a single facility unit is appropriate is applicable in this case. Petitioner relies on *Manor Health Care Corp.*, 285 NLRB 224 (1987). Based on record facts, I have found that the Cupola is not a separate entity, but is an integrated area of one contiguous facility. In finding that the entire facility is a single unit, I note that it is well established that the Board does not approve of fractured units or units that are so narrowly construed as to omit employees who share a community of interest. *Colorado National Bank of Denver*, 204 NLRB 243 (1973). Thus, I find that the petitioned for employees do not share a sufficiently distinct community of interest from those of the certified nursing assistants, recreational and therapy aides or from those employees regularly assigned to Pine Rest as to warrant a

¹² The Employer asserts that the host and hostesses are supervisors and should not be included in the unit. Petitioner, at hearing, specifically sought their inclusion. As the record is silent as to sufficient supervisory indicia, I do not find that routinely directing waiters and waitresses to work stations to be sufficient evidence of supervisory authority and I will include them in the unit found appropriate here. As to the two housekeeping heads, De Leone and Burnell, neither party appears to take a position as to their supervisory status. As the record contains insufficient evidence of indicia of supervisory status, I will include them in the unit as well.

separate unit and that the petitioned for unit would be an arbitrary one. *Seaboard*, supra at 556 citing *Branch Provision Services*, 313 NLRB 657 (1994).

Based on the facts and case law cited supra, and the record as a whole, I find the following unit to be appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full time and regular part time service and maintenance employees, including food service employees, chefs, dishwashers, waiters, waitresses, hosts, hostesses, housekeeping employees, including heads of housekeeping, certified nursing assistants, recreation aides and therapy aides employed by the Employer at its Paramus, New Jersey campus facility but excluding all office clerical employees, managerial employees, professional and technical employees, guards and supervisors as defined in the Act, and all other employees.

DIRECTION OF ELECTION¹³

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to issue subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who are employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during

¹³ As the unit found appropriate is larger than that requested, the Petitioner is accorded a period of 14 days in which to submit any additional showing of interest to support an election, if necessary. In the event Petitioner does not wish to proceed to an election it may withdraw its petition without prejudice by notice to the undersigned within seven (7) days from the date of this Decision and Direction of Election. *Folger Coffee*, 250 NLRB 1 (1980).

the eligibility period and their replacements. Those in the military services of the United States Government may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by **United Food and Commercial Workers Local 348-S, AFL-CIO, CLC.**

LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, two (2) copies of an election eligibility list containing the full names and addresses of all the eligible voters shall be filed by the Employer with the undersigned, who shall make the list available to all parties to the election. *North Macon Health Care Facility*, 315 NLRB 359 (1994). In order to be timely filed, such list must be received at NLRB Region 22, 5th Floor, 20 Washington Place, New Jersey 07102-3115, on or before August 16, 2001. No extension of time to file this list shall be granted except in extraordinary

circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by August 23, 2001.

Signed at Newark, New Jersey this 9th day of August, 2001.

Gary T. Kendellen, Regional Director
NLRB Region 22
The Veterans Administration Building
20 Washington Place, 5th Floor
Newark, New Jersey 07102-3115

401-7575
420-4000
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470-8500